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NOTE CHANGES MADE BY THE COURT

Attorneys for OTX ACQUISITION CORPORATION, a Delaware Corporation,
OTX ACQUISITION LLC, a Delaware Limited Liability Company,
OTX Corporation, a Delaware Corporation

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 KRISTIN LUCK, an individual,
13
14 Plaintiff,

Case No.: CV-10-01671-SVW(PJWx)

15 vs.

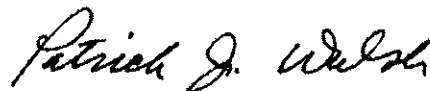
ENTRY OF PROTECTIVE ORDER

16 OTX ACQUISITION
17 CORPORATION, a Delaware
18 Corporation, OTX ACQUISITION
19 LLC, a Delaware Limited Liability
20 Company, OTX CORPORATION, a
21 Delaware Corporation, AND DOES 1
22 to 10, inclusive,
23 Defendants.

22 Upon consideration of the attached Stipulation for Entry of Protective Order
23 submitted by the parties, and good cause appearing therefore,

24 IT IS HEREBY ORDERED, that the Stipulation is approved, and the
25 Protective Order entered as an Order of the Court.

26
27 DATED: 4/28/2010



28 Patrick J. Walsh, U.S. Magistrate Judge

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7 OTX ACQUISITION LLC, a Delaware Limited Liability Company,
8 OTX Corporation, a Delaware Corporation

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 KRISTIN LUCK, an individual,
13 Plaintiff,

Case No.: CV-10-01671-SVW(PJWx)

14 vs.

**STIPULATION FOR ENTRY OF
PROTECTIVE ORDER**

15 OTX ACQUISITION
16 CORPORATION, a Delaware
Corporation, OTX ACQUISITION
17 LLC, a Delaware Limited Liability
Company, OTX CORPORATION, a
18 Delaware Corporation, AND DOES 1
to 10, inclusive,

*Note Court's changes to
p 15e.*

19 Defendants.

NOTE CHANGES MADE BY THE COURT

21 **IT IS HEREBY STIPULATED** by and between Plaintiff KRISTIN LUCK
22 ("LUCK") and defendants OTX ACQUISITION CORPORATION, OTX
23 ACQUISITION LLC and OTX CORPORATION (defendants are collectively
24 referred to hereinafter as "OTX"), by and through their respective counsel of record,
25 that in order to facilitate the exchange of information and documents which may be
26 subject to limitations on disclosure due to federal laws, state laws, and privacy
27 rights, which may be protected from disclosures by privileges such as trade secret
28

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1 protections, and/or which may be protected from disclosure on the grounds that the
2 documents or information constitute confidential, financial or other proprietary
3 information, the parties stipulate as follows:

4 **DEFINITIONS**

5 1. **Party**: "Party" means any plaintiff, defendant, counter-claimant or
6 counter-defendant in this action, including their parent, subsidiary, or affiliated
7 entities, and their respective agents, officers, directors and employees. LUCK and
8 defendants are collectively referred to as the "Parties."

9 2. **Counsel**: "Counsel" means:

10 a. Joseph M. Kar, PC, including attorney Joseph M. Kar, and its
11 respective support staff and other employees who are not employed by a Party and
12 to whom it is necessary to disclose Protected Material for the purpose of this action;

13 b. Epps Yong & Coulson, LLP, including attorneys Dawn M.
14 Coulson, Casandra P. Secord, and its respective support staff and other employees
15 who are not employed by a Party and to whom it is necessary to disclose Protected
16 Material for the purpose of this action; and

17 3. **Material**: "Material" means all documents, information, items,
18 pleadings, correspondence, discovery responses, writings, and testimony regardless
19 of the medium or manner generated, stored or maintained (including, among other
20 things, testimony, transcripts, or tangible things).

21 4. **Discovery Material**: "Discovery Material" means all items or
22 information, regardless of the medium or manner generated, stored, or maintained
23 (including, among other things, testimony, transcripts, or tangible things) that are
24 produced or generated in response to discovery directed towards a Party or non-
25 party in this matter.

26 5. **Designating Party**: "Designating Party" means a Party or non-party that
27 designates Materials or disclosures produced or utilized in this litigation by any
28 Party or any third party (pursuant to subpoena or otherwise) as Confidential

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1 Material.

2 6. Receiving Party: "Receiving Party" means a Party to this action and all
 3 employees, agents and directors (other than Counsel) of the Party, who receives
 4 Confidential Material.

5 7. Producing Party: "Producing Party" means a Party or non-party that
 6 produces or discloses Confidential Material in this action.

7 8. Confidential Material: "Confidential Material" means the following:
 8 (1) Material which has not been made public and which contains confidential and
 9 proprietary information or trade secrets of the parties, the release of which the
 10 designating party reasonably believes in good faith would harm its business; and (2)
 11 Material which has not been made public and which is protected from disclosure by
 12 federal or state constitutional, statutory and common law, including, but not limited
 13 to, rights of privacy of the parties to this stipulation and of third parties.

14 9. Protected Material: "Protected Material" means any Material that is
 15 designated as "Confidential" in accordance with the terms of this Protective Order.

16 DESIGNATION OF CONFIDENTIAL MATERIAL

17 10. Criteria for Classification

18 Any Party or non-party in this action may designate any Material as
 19 "Confidential" in accordance with the provisions of this Protective Order so long as
 20 they believe in good faith that the information so designated meets the definition of
 21 "Confidential Material" set forth in this Protective Order.

22 11. Time of Designation

23 Unless otherwise agreed between counsel for the parties, or as otherwise
 24 specified herein, the designation of Confidential Material shall be made at the
 25 following times:

- 26 a. Producing Party shall designate Discovery Materials consisting
 27 of production of documents or things as "Confidential" at the time of production.
 28 Receiving Party shall designate Discovery Materials consisting of production of

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1 documents or things as "Confidential" within thirty days (30) days of the date of
2 service of the documents or things;

3 b. For declarations, correspondence, expert witness reports, written
4 discovery responses, court filings, pleadings, and other documents, at the time of the
5 service or filing, whichever occurs first;

6 c. For testimony, at the time such testimony is given by a statement
7 designating the testimony as "Confidential" made on the record or within ten (10)
8 days after receipt of the transcript of the deposition as set forth herein.

9 12. Manner of Designation

10 The designation of Confidential Materials shall be made in the following
11 manner:

12 a. For documents, Producing Party shall place the notation
13 "Confidential" or similar legend on each page of such document. Receiving Party
14 shall designate documents as "Confidential" by sending correspondence to all other
15 counsel that identifies the Bates numbers of the document(s) designated
16 "Confidential." In the absence of Bates numbers, the Receiving Party shall describe
17 the document(s) in sufficient detail to accurately identify the document(s)
18 designated confidential;

19 b. For tangible things, by placing the notation "Confidential" on the
20 object or container thereof or if impracticable, as otherwise agreed by the parties;

21 c. For declarations, correspondence, expert witness reports, written
22 discovery responses, court filings, pleadings, and any other documents containing
23 Confidential Material, by placing the notation "Confidential" both on the face of
24 such document and on any particular designated pages of such document; and

25 d. For testimony, by orally designating such testimony as being
26 "Confidential" at the time the testimony is given. Alternatively, if a question asked
27 at a pretrial deposition calls for an answer containing "Confidential Material", or if
28 the question contains "Confidential Material," counsel for the Party seeking

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confidential treatment of that information shall within ten (10) days after receipt of the transcript of the deposition notify all other counsel on the record or in writing that the information provided in such answer or question is considered Confidential Material and designate the specific portions or the entirety of the transcript of such deposition, which shall thereafter be subject to the provisions of this Order. Prior to the expiration of this ten (10) day period deposition transcripts will be considered conditionally confidential and will be treated as Confidential Material. Thereafter, the original and all copies of the "Confidential" portions of the transcript of any such testimony shall be separately bound and marked by the Court Reporter with an appropriate legend and shall be disclosed only in accordance with the provisions of this Protective Order.

13. Resolution Of Disputes Regarding Designation

The acceptance by a Party of Material marked as "Confidential" shall not constitute an admission or concession or permit an inference that such designation is appropriate. Any dispute that arises concerning the designation of Material as "Confidential" shall be resolved by the court pursuant to applicable law. Any Material marked as Confidential shall be treated as designated unless otherwise ordered by the court or agreed to by the parties.

14. Inadvertent Disclosure

a. Confidential Material not designated as "Confidential" and produced or filed through mistake or inadvertence shall nevertheless be deemed "Confidential" upon notice of such mistake or inadvertent production or filing.

b. Where a Producing Party has inadvertently produced a document that the Producing Party later claims should not have been produced because of privilege, the Producing Party may request the return of any such document by making a written request within fifteen (15) days of discovering that it was inadvertently produced. A request for the return of any document shall identify the document by Bates number (or described in sufficient detail in the absence of Bates

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numbers) and the basis for asserting the document (or portions thereof) is privileged and the date of discovery of the inadvertent production. If a Producing Party requests the return of any such document from another Party, the Party to whom the request is made shall within ten (10) days return to the Producing Party all copies of the document within its possession, custody, or control (including but not limited to all copies in possession of any experts or consultants) or shall contest the claim of privilege or inadvertent production. In the event the Receiving Party contests the claim of privilege or inadvertent production, the Producing Party may file and serve a motion or other application acceptable by the Court within ten (10) days of receipt of any contest of the Producing Party's designation of Confidential or assertion of Privilege, to obtain a judicial determination that the document is privileged and shall set the hearing date within no more than sixty (60) days hence. Until such a judicial determination is made, the alleged privileged document shall be afforded privileged status. However, if the time has expired for the Receiving Party to obtain judicial determination hereunder, the Producing Party's designation of confidentiality or assertion of Privileged is deemed waived.

DISCLOSURE OF PROTECTED MATERIAL

15. Disclosure to Qualified Persons

Protected Material may be disclosed and copies may be provided by the Receiving Party only to the following "qualified persons" and only if the following "qualified persons" have signed the last page of this stipulation acknowledging their understanding and agreement thereto:

- a. Party's counsel, both in-house and outside counsel (including the paralegal, clerical, and secretarial staff employed by such counsel) in this matter;
- b. Party representatives or employees whose assistance is required by counsel for the purposes of this litigation, including but not limited to, an officer,

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1 director, or employee of a Party deemed necessary by counsel to aid in the
 2 prosecution, defense, or settlement of this action;

3 c. Any non-party support services including, but not limited to,
 4 outside copying services, document imaging and database services, graphics and
 5 design services, jury and trial consulting services (including mock jurors), court
 6 reporters and any other non-expert related support personnel whose services are
 7 reasonably necessary to assist outside counsel of record in connection with this
 8 action;

9 d. Expert witnesses or consultants retained by a Party or its
 10 respective attorneys in connection with this action (together with their clerical staff);

11 e. The Court, its clerks and employees, and any court reporter
 12 retained to record proceedings before the Court, ~~in which event such information~~

13 ~~shall be filed under seal, and~~ *(These individuals will not be asked and*
 14 *are not required to sign anything in order*
 15 *to receive*

16 f. Any other person as to whom the parties agree in writing. *document*
 17 It shall be the responsibility of Counsel to provide copies of this Protective
 18 Order to qualified persons receiving Protected Material, and to maintain compliance
 19 with this Protective Order.

16. Use of Protected Material During Deposition

20 Notwithstanding any other provision of this Protective Order, Protected
 21 Material may be disclosed and used as follows:

22 a. A Party or present employee of a Party may be examined and
 23 may testify concerning all Protected Material produced by that Party;

24 b. A former employee of a Party may be examined and may testify
 25 concerning all Protected Material produced by that Party to which that former
 26 employee has knowledge or which pertains to the period or periods of his or her
 27 employment;

28 c. Non-parties may be examined and may testify concerning any
 document containing Protected Material which appears on its face or from other

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documents or testimony to have been prepared by, received by, known by or communicated to the non-party (other than through inadvertent disclosure).

USE OF PROTECTED MATERIAL

Protected Material may be used as follows:

17. Protected Material, including all information derived therefrom, and all copies, summaries, abstracts, excerpts, and descriptions of such Material, shall be held in confidence by the parties, shall be used only by persons permitted access to it under this Protective Order, shall not be disclosed by any Party unless allowed under the terms of this Protective Order, and shall not be used for any purpose other than in connection with this action, including, but not limited to, personal, business, or competitive purposes, or for other lawsuits, claims or actions of any kind.

18. Where any Confidential Material, or information derived from Confidential Material is included in any papers filed with the Court, including, but not limited to discovery motions, the parties will comply with all applicable federal rules and procedures for filing records under seal, including, but not limited to, Central District, Rule 79-5 unless such derivative material is publicly available or unless counsel for parties otherwise agree in a prior writing.

19. Protected Material may be used in testimony at trial, offered into evidence at trial and/or at hearings on motions, used to support or oppose any motion in this action and used to prepare for and conduct discovery in this action subject to the restrictions in this Protective Order.

20. The parties shall provide each other with a list of the other Party's Protected Material that the Party intends to use at trial, or in connection with any appeal of this action, at such time as the list of exhibits is ordered by the Court to be exchanged among the parties, except those documents to be used for impeachment purposes. Nothing in this paragraph prevents the use of any documents for impeachment or rebuttal subject to the terms and conditions of this Protective Order. The parties shall then meet and confer regarding the procedures for use of such

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1 identified Protected Material at trial and shall move the Court for entry of an
 2 appropriate order if required.

3 21. Nothing in this Protective Order shall affect the admissibility into
 4 evidence of Protected Material, or abridge the rights of any person to seek judicial
 5 review or to pursue other appropriate judicial action with respect to any ruling made
 6 by the Court concerning the issue of the status of Protected Material. This
 7 Protective Order is without prejudice to any Party seeking an Order from this Court
 8 imposing further restrictions on the dissemination of Protective Material, or seeking
 9 to rescind, modify, alter, or amend this Protective Order with respect to specific
 10 information. Nothing in this Protective Order shall prevent any designating party
 11 from using or disclosing its own Protected Material as it deems appropriate.

12 22. The designation of Material as "Confidential" by a Party or the failure
 13 by a Party to object to the designation of Material as "Confidential" shall be not
 14 deemed a conclusive determination or admission that such Material constitutes a
 15 trade secret of the Producing Party.

16 23. Nothing herein shall be construed to prevent disclosure of Confidential
 17 Material if such disclosure is required by law or by order of the Court. However, if
 18 another court or administrative agency subpoenas or orders production of
 19 Confidential Material that a Party has obtained under the terms of this Order, such
 20 Party shall promptly notify the Party or another person designating the document as
 21 Confidential or of the pendency of the subpoena or order and shall not produce the
 22 Confidential Material or until the designating Party or person has had a reasonable
 23 time to object or otherwise to take appropriate steps to protect the Confidential
 24 Material.

25 **RETURN OF DOCUMENTS OR INFORMATION**

26 24. No later than one hundred twenty (120) days after conclusion of this
 27 litigation,¹ each Party or other individuals subject to this Protective Order shall be
 28

¹ As used herein, "conclusion of this litigation" is defined as the date on which this matter is settled by way of

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under an obligation to destroy or return to the designating party any Protected Material subject to this Protective Order that is in his or her possession, custody or control, including all copies thereof. Notice of the destruction or return of any such Protected Material shall be made by counsel in writing, and notice of receipt thereof shall be acknowledged in writing. Notwithstanding the foregoing provisions of this Paragraph, counsel shall be entitled to retain all litigation documents containing Protected Material which become part of the record of this action, including pleadings, briefs, and exhibits.

RIGHT TO FURTHER RELIEF

25. Nothing in this Protective Order shall abridge the right of any person to seek modification or amendment of this Order from the Court.

RIGHT TO ASSERT OTHER OBJECTIONS

26. This Protective Order shall not be construed as waiving any right to assert a claim of privilege, relevance, or other grounds for not producing Discovery Material.

SURVIVAL

27. All obligations and duties arising under this Protective Order shall cease upon any termination of the trial court action.

VIOLATION OF PROTECTIVE ORDER

28. Any intentional violation of this Protective Order may constitute a contempt of Court, and be punishable as such, and may subject the offending Party or non-party to such additional and further remedies as may be available to the aggrieved Party or non-party.

AMENDMENT OF PROTECTIVE ORDER

29. This Protective Order may be amended by the written stipulation of the parties or by the Court upon a showing of good cause.

enforceable agreement or on which all appeals and rights to appeal have been exhausted, whichever is earlier.

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EXECUTION AND COUNTERPARTS

30. This Order may be executed in one or more identical counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Facsimile signatures of any Party upon the signature page of this Order shall be binding upon the Parties hereto and may be submitted as though such signatures were original signatures.

Dated: April 23, 2010

JOSEPH M. KAR, PC

By: 

Joseph M. Kar

Attorneys for Plaintiff KRISTIN LUCK

Dated: April 26, 2010

EPPS YONG & COULSON, LLP

By: 

Dawn M. Coulson

Cassandra P. Secord

Attorneys for OTX ACQUISITION
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STIPULATION FOR ENTRY OF PROTECTIVE ORDER